

REMARKS

Status of the Claims

In view of the finality of the restriction requirement, and the Examiner's indication of allowable subject matter, Claims 1-29, 35-43, 58-70, and 85-89 have been canceled as being drawn to a non-elected invention, and Claims 44-57 and 71-84 have been canceled without prejudice to or disclaimer of the subject matter encompassed thereby in order to advance prosecution of this application. Applicants expressly reserve the right to file continuing applications or take other such appropriate measures to seek protection for the inventions encompassed by these canceled claims.

Claims 30-33 have been amended. Specifically, Claims 30 and 32 have been amended to be in independent form and to recite only elected subject matter (SEQ ID NO:10). Claim 31 has been amended to be in independent form and to recite only elected subject matter (SEQ ID NO:5). Claim 33 has been amended to correct antecedent basis, and hence now recites "the isolated polynucleotide," which is consistent with the language of Claim 30 from which it depends. Claim 34 is amended so that "A host cell" is now "An isolated host cell."

New Claims 90-99 have been added. Support for these claims resides, for example, in claims 14, 15, and 17-23, now canceled.

No new matter is added by way of claim amendment or presentation of new claims. Entry of these amendments to the claims is therefore respectfully requested.

Claims 30-34 and 90-94 are now pending in the application. Applicants respond to each of the Examiner's objections and rejections below. In view of the amendments above and the remarks below, Applicants respectfully request reconsideration of the merits of this application. Accordingly, Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Restriction Requirement

On March 9, 2009, Applicants' elected Group II (Claims 30-34, 44-57 and 71-84) and isolated polynucleotides encoding SEQ ID NO:5 or 10 in a Response to Restriction Requirement. The Examiner made the restriction final. Consequently, Claims 1-29, 35-43, 58-70 and 85-89

have been canceled as being drawn to non-elected inventions, without prejudice to the filing of continuing applications to seek protection of this canceled subject matter.

The Objections to the Claims Should Be Withdrawn

Claims 30-32, and claims 33 and 34 dependent therefrom, are objected to for depending from non-elected claims. Claims 30-32 have been amended to be in independent form and to recite only SEQ ID NO:5 or 10. Accordingly, claims 30-34 no longer depend from non-elected claims. Applicants respectfully request reconsideration and withdrawal of the objection.

Claims 48 and 75 are objected to for reciting non-elected subject matter. These claims have been canceled, thereby rendering this objection moot.

Claims 44, 53, and 57 are objected to for reciting "a polypeptide comprising a biologically active interferon, wherein said interferon contains a carboxy terminus truncation." These claims have been canceled, thereby rendering this objection moot.

Claims 71, 80 and 84 are objected to for reciting "a polypeptide comprising a biologically active human α -2b-interferon, wherein said human α -2b-interferon contains a carboxy terminus truncation." These claims have been canceled, thereby rendering this objection moot.

The Rejection Under 35 U.S.C. § 101 Should Be Withdrawn

Claims 44-48 and 71-75 are rejected for being directed to non-statutory subject matter. These claims have been canceled, thereby rendering this rejection moot.

The Rejections Under 35 U.S.C. § 112, First Paragraph, Should Be Withdrawn

Enablement Rejection

Claims 44-46, 49-57, 71-73, and 76-84 are rejected for failing to comply with the enablement requirement. These claims have been canceled, thereby rendering this rejection moot.

Claims 34, 51-52, 57, 78, 79, and 84 are rejected for failing to comply with the enablement requirement. Claims 51-52, 57, 78, 79, and 84 have been canceled, thereby

rendering this objection moot as applied to these claims. Claim 34 has been amended so that "A host cell" is now "An isolated host cell," as suggested by the Examiner. Applicants therefore respectfully request reconsideration and withdrawal of the rejection of Claim 34.

Written Description Rejection

Claims 44-46, 49-57, 71-73, and 76-84 are rejected for failing to comply with the written description requirement. These claims have been canceled, thereby rendering this rejection moot.

The Rejection Under 35 U.S.C. § 112, Second Paragraph, Should Be Withdrawn

Claims 53 and 80 are rejected for being indefinite. These claims have been canceled, thereby rendering this rejection moot.

The Rejections Under 35 U.S.C. § 102 Should Be Withdrawn

Rejection over US Patent Application Publication No. 2005/0221344 by Welcher et al.

Claims 44-46, 49-52 and 57 are rejected for being anticipated by US Patent Application Publication No. 2005/0221344 by Welcher *et al.* These claims have been canceled, thereby rendering this rejection moot.

Rejection over Franke et al. (1982) DNA 1:223-230.

Claims 44, 49-52, 57, 71, 76-79 and 84 are rejected for being anticipated by Franke *et al.* (1982) DNA 1:223-230. These claims have been canceled, thereby rendering this rejection moot.

The Rejections Under 35 U.S.C. § 103 Should Be Withdrawn

Rejection over Welcher et al., supra, or Franke et al., supra, each in view of US Patent Application Publication No. 2003/0135887 by Brandle et al.

Claims 53-56 are rejected for being obvious over Welcher *et al.*, *supra*, or Franke *et al.*, *supra*, each in view of US Patent Application Publication No. 2003/0135887 by Brandle *et al.* These claims have been canceled, thereby rendering this rejection moot.

Rejection over Franke et al., supra, in view of Welcher et al., supra.

Claims 72-73 are rejected for being obvious over Franke *et al.*, *supra*, in view of Welcher *et al.*, *supra*. These claims have been canceled, thereby rendering this rejection moot.

Rejection over Franke et al., supra, in view of Welcher et al., supra, in further view of Brandle et al., supra.

Claims 80-83 are rejected for being obvious over Franke *et al.*, *supra*, in view of Welcher *et al.*, *supra*, in further view of Brandle *et al.*, *supra*. These claims have been canceled, thereby rendering this rejection moot.

Non-Statutory Obviousness-Type Double Patenting Rejection

Claims 53-57 and 80-84 are rejected under the judicially created doctrine of obviousness-type double patenting as patentably indistinct from Claims 1, 7, 8, 12, and 14-17 of US Patent No. 6,815,184 to Stomp *et al.* These claims have been canceled, thereby rendering this rejection moot.

New Claims Presented

New claims 90-99 have been added. Claims 90 and 91 are directed to embodiments of Claim 32, wherein the signal peptide is either a plant signal peptide or a mammalian signal peptide. Claims 92-94 are directed to embodiments of claim 34, wherein specific isolated host cells are recited. Claim 95 is directed to an expression cassette comprising the polynucleotide of claim 32. Claims 96-99 are directed to host cells comprising the expression cassette of claim 95. Support for these claims resides, for example, in Claims 14, 15, and 17-23, now canceled. As these new claims depend from claims that recite subject matter free of the prior art, and which meet the requirements under 35 U.S.C. §§101 and 112, Applicants respectfully submit that these claims are also drawn to allowable subject matter.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants respectfully submit that the objections to the claims, the rejections of the claims under 35 U.S.C. §§101, 112, 102, and 103, and the obviousness-type double-patenting rejection are now overcome. Accordingly, Applicants submit that this application is now in condition for allowance. Early notice to this effect is solicited. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

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